

Message Text

UNCLASSIFIED

PAGE 01 HAMBUR 00451 01 OF 03 290903Z

ACTION IO-14

INFO OCT-01 EUR-12 ISO-00 AF-10 ARA-14 EA-12 NEA-10
AGRE-00 CEA-01 CIAE-00 COME-00 DODE-00 EB-08
FRB-01 H-02 INR-10 INT-05 L-03 LAB-04 NSAE-00
NSC-05 PA-02 CTME-00 AID-05 SS-15 STR-07 ITC-01
TRSE-00 USIA-15 SP-02 SOE-02 OMB-01 DOE-15
DOTE-00 FMC-02 CG-00 DLOS-09 OES-07 OIC-02 /197 W
-----019822 291032Z /10

R 281405Z MAR 78

FM AMCONSUL HAMBURG

TO SECSTATE WASHDC 4662

UNCLAS SECTION 1 OF 3 HAMBURG 451

PASS: KEARNEY, BANK, STATE; JOHNSON, MARAD; JACKLIN,
TREASURY; KUTSKE, DRISCOLL, SHEFLER, DOT: FREE COMMERCE.

E.O. 11652: N/A

TAGS: OCON, OTRA, AFIN, UNCITRAL, GW

SUBJECT: UNCITRAL - CONFERENCE ON CARRIAGE OF GOODS BY SEA, HAMBURG

SUMMARY: DEVELOPMENTS AT U.N. CARRIAGE OF GOODS BY SEA
CONFERENCE DURING EASTER WEEKEND. CONCLUSION OF
PACKAGE DEAL.

1. AS NOTED IN TELEPHONE CALLS TO AMBASSADOR KEARNEY
ON 23 AND 27 MARCH, THE FOLLOWING DEVELOPMENTS IN THE
CHAIRMAN'S CONSULTATIVE GROUP HAVE TAKEN PLACE:

A. THE GROUP OF 14 STATES REFERRED TO IN LAST
CABLE MET ON WEDNESDAY 22 MARCH. FORMAL STATEMENTS WERE
MADE AND CHAIRMAN CHAFIK ASKED FOR WRITTEN PROPOSALS OF
PACKAGE DEAL.

B. WRITTEN PROPOSALS PRESENTED THURSDAY FOLLOWED
BY REHASH OF SPEECHES PREVIOUSLY MADE. IN VIEW OF FACT
THAT NO ONE SEEMED TO BE GIVING UP ANYTHING IN NEW
PROPOSALS CHAFIK FORMED SMALLER, INNER GROUP CONSISTING
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 HAMBUR 00451 01 OF 03 290903Z

OF NETHERLANDS, REPRESENTING WEST EUROPEAN AND JAPAN
SHIPOWNERS; USSR; MEXICO, REPRESENTING GROUP OF 77;
NORWAY AND U.S.A. TO PREPARE A PACKAGE DEAL.

2. NETHERLANDS BEGAN NEGOTIATION BY ANOTHER STONEWALL
BUT THEN PROPOSED WEAKENING OF FIRE DEFENSE IN RETURN
FOR RETENTION OF NAUTICAL FAULT AND ATHENS FORMULA ON

UNBREAKABLE LIMITS. USSR INDICATED THEY AGREED.

3. MEXICO INDICATED NO PROPOSAL RETURNING TO NAUTICAL FAULT WOULD BE ACCEPTABLE AND PREFERRING EXISTING UNCITRAL TEXT ON ARTICLE 8 BUT INDICATED SURRENDER ON MASTER IN ART. 8(1)C., TO WHICH NORWAY AGREED. U.S. INDICATED DRUNKEN PILOT PROBLEM IMPOSSIBLE TO DEFEND, WHILE NETHERLANDS INDICATED NO NEGOTIATION ON ART. 8 POSSIBLE. USA AGAIN PROPOSED THAT IT COULD ACCEPT 2 SDR FOR BREAKABLE LIMITS BUT THAT FIGURE FOR UNBREAKABLE LIMITS MUST COVER 80-90 PERCENT OF U.S. CARGOES, OR APPROXIMATELY 4.5 TO 5 SDR.

4. NORWAY THEN SAW THAT STRONGEST VIEWS HAD BEEN EXPRESSED ON NAUTICAL FAULT AND UNBREAKABILITY; THEREFORE BOTH THOSE ITEMS MUST BE PRESERVED IN ANY PACKAGE. USA PREPARED TO TRADE BREAKABILITY FOR REASONABLE PACKAGE WITH NO NAUTICAL FAULT AND EASIER FIRE PROPOSAL, PICKING UP ON NETHERLANDS STATEMENT IN COMMITTEE ONE THAT 75 PERCENT OF CARGOES MUST BE COVERED. THEREFORE U.S. SAID FIGURE OF 3 SDR COULD BE ACCEPTED FOR SOME COMPROMISE OF BREAKABILITY PROVISION.

5. USSR HAVING INDICATED PREFERENCE FOR 1 OR 1.5 SDR LIMIT, SAID U.S. FIGURE COMPLETELY UNACCEPTABLE AND NOT SUBJECT TO DISCUSSION. NETHERLANDS AGREED. MEXICO UNCLASSIFIED

UNCLASSIFIED

PAGE 03 HAMBUR 00451 01 OF 03 290903Z

FLEXIBLE. NORWAY, HAVING INDICATED NEED FOR 3 SDR LIMIT IN VIEW OF FACT THAT 1974 VISBY LEGISLATION NOW RESULTED IN LIMIT APPROACHING 3 SDR, NOW INDICATED 2 SDR VERY REASONABLE IN VIEW FACT THAT CARRIERS WOULD THEREBY BECOME PART OF NEW CONVENTION SYSTEM.

6. USA PROPOSED 2.75 SDRM USSR COUNTERED WITH 2.6 SDR AND MEXICO INDICATED 2.5 SDR ACCEPTABLE, BUT ONLY ON CONDITION NO NAUTICAL FAULT, WEAKENED FIRE PROVISION, AND SLIGHTLY REVISED ARTICLE 8.

7. NETHERLANDS SAID NO GIVE ON ARTICLE 8 BUT OTHER ELEMENTS OF PACKAGE POSSIBLE. NORWAY PROPOSED TO OBFUSCATE FIRE PROPOSAL TO ACCOMMODATE ALL VIEWS ON FIRE AND RETURNING TO ATHENS FORMULA ON UNBREAKABLE LIMITS AND NO NAUTICAL FAULT IN EXCHANGE FOR 2.5 SDR PER KILO AND 835 SDR PER PACKAGE. CHAFIK PRONOUNCED PACKAGE ACCEPTABLE AND USSR, USA, MEXICO, AND NETHERLANDS CONCURRED.

8. US THEN CONSULTED WITH AUSTRALIA, FRANCE, AND CANADA FOR WHOM WE HAD SPOKEN AT CONSULTATIVE GROUP. AUSTRALIA AND FRANCE BOTH ACCEPTED IMMEDIATELY, ESPE-

CIALLY IN VIEW OF THEIR STATEMENTS THAT PACKAGE LIMIT
COULD NEVER EXCEED 2.5 SDR, FRANCE HAVING INDICATED
RANGE FROM 2.15 TO 2.35 SDR. CANADA DEEPLY DISAPPOINTED
AND INSISTED ON FLOOR FIGURE RUNNING FROM 3.5 TO 5 SDR.
US FELT CANADIAN POSITION TOTALLY UNREALISTIC AND
INVITED CANADIAN CHIEF DELEGATE, W.H. MONTGOMERY, TO
PARTICIPATE IN FURTHER MEETINGS AS MEMBER OF US DELE-
GATION, WHICH WAS ACCEPTED BY HIM, ALTHOUGH RESULTING
IN SHARP PROTEST BY NETHERLANDS WHICH WAS IGNORED BY
US AND CHAIRMAN CHAFIK. IN VIEW OF FACT THAT PACKAGE
DEAL WELL WITHIN LIMITS OF US INSTRUCTIONS AND AFTER
CONSULTATION BY TELEPHONE WITH AMBASSADOR KEARNEY,
US DELEGATION GAVE FIRM APPROVAL OF PACKAGE DEAL.

KISELYAK
UNCLASSIFIED

UNCLASSIFIED

PAGE 04 HAMBUR 00451 01 OF 03 290903Z

UNCLASSIFIED

NNN

UNCLASSIFIED

PAGE 01 HAMBUR 00451 02 OF 03 290917Z
ACTION IO-14

INFO OCT-01 ISO-00 AF-10 ARA-14 EA-12 EUR-12 NEA-10
AGRE-00 CEA-01 CIAE-00 COME-00 DODE-00 EB-08
FRB-01 H-02 INR-10 INT-05 L-03 LAB-04 NSAE-00
NSC-05 PA-02 CTME-00 AID-05 SS-15 STR-07 ITC-01
TRSE-00 USIA-15 SP-02 SOE-02 OMB-01 DOE-15
DOTE-00 FMC-02 CG-00 DLOS-09 OES-07 OIC-02 /197 W
-----019946 291032Z /10

R 281405Z MAR 78
FM AMCONSUL HAMBURG
TO SECSTATE WASHDC 4663

UNCLAS SECTION 2 OF 3 HAMBURG 451

PASS: KEARNEY, BANK, STATE; JOHNSON, MARAD; JACKLINZN
TREASURY; KUTSKE, DRISCOLL, SHEFLER, DOT: FREE COMMERCE.

9. ON FRIDAY, CHAIRMAN CHAFIK MET WITH INNER GROUP
AGAIN WHICH GAVE APPROVAL TO PACKAGE DEAL. THEREAFTER
NETHERLANDS-UK CONCENTRATED EFFORTS ON UNDOING PACKAGE
DEAL BY ATTACKING BASIC PRINCIPLE OF PRESUMED FAULT IN

ARTICLE 5(1). FIVE HOURS OF SATURDAY MEETINGS NECESSARY TO PUT DOWN THIS EFFORT, RESULTING IN FIRM FEELING OF GROUP OF 77 THAT ARTICLE 5(1) TEXT COULD NOT BE CHANGED.

10. ON MONDAY, CHAFIK CONCENTRATED 14-NATION GROUP EFFORTS ON DELAY. US INDICATED IT COULD ACCEPT LOWER LIMIT FOR CONSEQUENTIAL ECONOMIC LOSS ON CONDITION THAT DETERIORATION WAS INCLUDED AS DAMAGE IN NORMAL LIMIT. NO NATION DISAGREED WITH NORWAY THAT LOSS, DAMAGE TO GOODS IN ART. 5(1) INCLUDES DETERIORATION. US WILL MAKE THIS UNDERSTANDING PART OF RECORD OF PLENARY.

11. FOUR HOURS OF DISCUSSION RESULTED IN A NUMBER OF UNCLASSIFIED

UNCLASSIFIED

PAGE 02 HAMBUR 00451 02 OF 03 290917Z

PROPOSALS ON WHICH THERE WAS NO AGREEMENT: ONE TIMES THE FREIGHT ON THE GOODS DELAYED (UK, NETHERLANDS, USSR); ONE TIMES THE FREIGHT ON THE ENTIRE CONTRACT (US, NORWAY); THREE TIMES THE FREIGHT (GROUP OF 77). AFTER SUPPER BREAK POLAND PROPOSED TWICE THE FREIGHT ON THE GOODS DELAYED, BUT NOT TO EXCEED THE TOTAL FREIGHT ON THE CONTRACT. GROUP OF 77 COUNTERED WITH THREE TIMES THE FREIGHT ON GOODS DELAYED, NOT TO EXCEED TOTAL CONTRACT. CHAFIK SETTLED PACKAGE AT TWO AND ONE HALF TIMES THE FREIGHT ON THE GOODS DELAYED, BUT NOT TO EXCEED THE TOTAL CONTRACT. NO ONE HAD ANY IDEA OF WHAT ECONOMIC CONSEQUENCES WOULD BE BUT IN VIEW OF IMPOSSIBILITY OF FURTHER PRODUCTIVE NEGOTIATIONS AND SHORTAGE OF TIME, ALL GROUPS CONSENTED TO CHAFIK COMPROMISE.

12. COMMITTEE TWO COMPLETED ITS WORK ON FRIDAY 24 MARCH AND MR. THOMAS RAMSEY RETURNED TO WASHINGTON ON SATURDAY. IN VIEW OF MR. RAMSEY'S AVAILABILITY IN WASHINGTON, CABLE REPORT WILL NOT NOW INCLUDE LENGTHY REPORT ON THOSE MATTERS. ESSENCE OF WORK, HOWEVER, WAS THAT NEW CONVENTION WILL COME INTO FORCE ON RATIFICATION BY 20 STATES. COMMITTEE TWO APPROVED REVISION OR AMENDMENT CONFERENCE ON REQUEST OF ONE THIRD OF CONTRACTING STATES, BUT QUESTION OF PERIODIC REVIEWS OF LIMITATION AMOUNT REMAINS OPEN. THIS QUESTION PASSED TO COMMITTEE ONE.

13. COMMITTEE ONE COMPLETED ITS REVIEW OF ALL 25 ARTICLES OF CONVENTION AND SOME NEW ONES ON MONDAY EVENING. HOWEVER, SOME POINTS SENT TO WORKING PARTIES AND ARE NOW BEING DISCUSSED IN COMMITTEE ONE. HOPE COMPLETE COMMITTEE ONE AND BEGIN PLENARY THIS AFTERNOON

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 HAMBUR 00451 02 OF 03 290917Z

OR EVENING. DRAFTING COMMITTEE IS NOW MAKING PROGRESS.

14. FOR INFORMATION PURPOSES THE ENTIRE TEXT OF THE PACKAGE DEAL IS NOW INCORPORATED IN THE CABLE REPORT.

QUOTE: ARTICLE 5. BASIS OF LIABILITY

1. THE CARRIER SHALL BE LIABLE FOR LOSS RESULTING FROM LOSS OF OR DAMAGE TO THE GOODS, AS WELL AS FROM DELAY IN DELIVERY, IF THE OCCURRENCE WHICH CAUSED THE LOSS, DAMAGE OR DELAY TOOK PLACE WHILE THE GOODS WERE IN HIS CHARGE AS DEFINED IN ARTICLE 4, UNLESS THE CARRIER PROVES THAT HE, HIS SERVANTS AND AGENTS TOOK ALL MEASURES THAT COULD REASONABLY BE REQUIRED TO AVOID THE OCCURRENCE AND ITS CONSEQUENCES.

2. DELAY IN DELIVERY OCCURS WHEN THE GOODS HAVE NOT BEEN DELIVERED AT THE PORT OF DISCHARGE PROVIDED FOR IN THE CONTRACT OF CARRIAGE WITHIN THE TIME EXPRESSLY AGREED UPON OR, IN THE ABSENCE OF SUCH AGREEMENT, WITHIN THE TIME WHICH IT WOULD BE REASONABLE TO REQUIRE OF A CARRIER, HAVING REGARD TO THE CIRCUMSTANCES OF THE CASE.

3. THE PERSON ENTITLED TO MAKE A CLAIM FOR THE LOSS OF GOODS MAY TREAT THE GOODS AS LOST WHEN THEY HAVE NOT BEEN DELIVERED AS REQUIRED BY ARTICLE 4 WITHIN 60 DAYS FOLLOWING THE EXPIRY OF THE TIME FOR DELIVERY ACCORDING TO PARAGRAPH 2 OF THIS ARTICLE.

4.(A) THE CARRIER SHALL BE LIABLE
(I) FOR LOSS OF OR DAMAGE TO THE GOODS OR DELAY IN DELIVERY CAUSED BY FIRE, IF THE CLAIMANT PROVES THAT FIRE AROSE FROM FAULT OR NEGLECT ON THE PART OF THE CARRIER, HIS SERVANTS OR AGENTS;

(II) FOR SUCH LOSS, DAMAGE OR DELAY IN DE-
UNCLASSIFIED

UNCLASSIFIED

PAGE 04 HAMBUR 00451 02 OF 03 290917Z

LIVERY WHICH IS PROVED BY CLAIMANT TO HAVE RESULTED FROM THE FAULT OR NEGLECT OF THE CARRIER, HIS SERVANTS OR AGENTS, IN TAKING ALL MEASURES THAT COULD REASONABLY BE REQUIRED TO PUT OUT THE FIRE AND AVOID OR MITIGATE ITS CONSEQUENCES.

KISELYAK

UNCLASSIFIED

NNN

UNCLASSIFIED

PAGE 01 HAMBUR 00451 03 OF 03 291029Z
ACTION IO-14

INFO OCT-01 ISO-00 AF-10 ARA-14 EA-12 EUR-12 NEA-10
AGRE-00 CEA-01 CIAE-00 COME-00 DODE-00 EB-08
FRB-01 H-02 INR-10 INT-05 L-03 LAB-04 NSAE-00
NSC-05 PA-02 CTME-00 AID-05 SS-15 STR-07 ITC-01
TRSE-00 USIA-15 SP-02 SOE-02 OMB-01 DOE-15
DOTE-00 FMC-02 CG-00 DLOS-09 OES-07 OIC-02 /197 W
-----020353 291031Z /10

R 281405Z MAR 78
FM AMCONSUL HAMBURG
TO SECSTATE WASHDC 4664

UNCLAS SECTION 3 OF 3 HAMBURG 451

PASS: KEARNEY, BANK, STATE; JOHNSON, MARAD; JACKLIN,
TREASURY; KUTSKE, DRISCOLL, SHEFLER, DOT; FREE COMMERCE.

(B) IN CASE OF FIRE ABOARD SHIP AFFECTING THE
GOODS, IF THE CLAIMANT OR THE CARRIER SO DESIRES, A
SURVEY IN ACCORDANCE WITH SHIPPING PRACTICES SHALL BE
HELD INTO THE CAUSE AND CIRCUMSTANCES OF THE FIRE, AND
A COPY OF THE SURVEYOR'S REPORT SHALL BE MADE AVAILABLE
ON DEMAND TO THE CARRIER AND A CLAIMANT AS THE CASE
MAY BE.

ARTICLE 6. LIMITS OF LIABILITY

1. (A) THE LIABILITY OF THE CARRIER FOR LOSS OR
DAMAGE TO GOODS ACCORDING TO THE PROVISIONS OF
ARTICLE 5 SHALL BE LIMITED TO AN AMOUNT EQUIVALENT TO
835 UNITS OF ACCOUNT PER PACKAGE OR OTHER SHIPPING
UNIT OR 2.5 UNITS OF ACCOUNT PER KILOGRAM OF GROSS
WEIGHT OF THE GOODS LOST OR DAMAGED, WHICHEVER IS THE
HIGHER.

(B) THE LIABILITY OF THE CARRIER FOR DELAY IN
DELIVERY ACCORDING TO THE PROVISIONS OF ARTICLE 5 SHALL
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 HAMBUR 00451 03 OF 03 291029Z

BE LIMITED TO AN AMOUNT EQUIVALENT TO TWO AND A HALF TIMES THE FREIGHT PAYABLE FOR THE GOODS DELAYED, BUT NOT EXCEEDING THE TOTAL FREIGHT PAYABLE UNDER THE CONTRACT OF CARRIAGE OF GOODS BY SEA.

(C) IN NO CASE SHALL THE AGGREGATE LIABILITY OF THE CARRIER, UNDER BOTH SUBPARAGRAPHS (A) AND (B) OF THIS PARAGRAPH, EXCEED THE LIMITATION WHICH WOULD BE ESTABLISHED UNDER SUBPARAGRAPH (A) OF THIS PARAGRAPH FOR TOTAL LOSS OF THE GOODS WITH RESPECT TO WHICH SUCH LIABILITY WAS INCURRED.

3. UNIT OF ACCOUNT MEANS THE UNIT OF ACCOUNT MENTIONED IN ARTICLE 26.

ARTICLE 8. LOSS OF RIGHT TO LIMIT RESPONSIBILITY

1. THE CARRIER SHALL NOT BE ENTITLED TO THE BENEFIT OF THE LIMITATION OF LIABILITY PROVIDED FOR IN ARTICLE 6 IF IT IS PROVED THAT THE LOSS, DAMAGE OR DELAY IN DELIVERY RESULTED FROM AN ACT OR OMISSION OF THE CARRIER DONE WITH THE INTENT TO CAUSE SUCH LOSS, DAMAGE OR DELAY WOULD PROBABLY RESULT.

2. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH 2 OF ARTICLE 7, A SERVANT OR AGENT OF THE CARRIER SHALL NOT BE ENTITLED TO THE BENEFIT OF THE LIMITATION OF LIABILITY PROVIDED FOR IN ARTICLE 6 IF IT IS PROVED THAT THE LOSS, DAMAGE OR DELAY IN DELIVERY RESULTED FROM AN ACT OR OMISSION OF SUCH SERVANT OR AGENT, DONE WITH THE INTENT TO CAUSE SUCH LOSS, DAMAGE OR DELAY OR RECKLESSLY AND WITH KNOWLEDGE THAT SUCH LOSS, DAMAGE OR DELAY WOULD PROBABLY RESULT. UNQUOTE.

15. THE FOLLOWING WORDING IS TO BE INCLUDED IN THE REPORT OF COMMITTEE I TO THE PLENARY:
UNCLASSIFIED

UNCLASSIFIED

PAGE 03 HAMBUR 00451 03 OF 03 291029Z

QUOTE: IT IS THE COMMON UNDERSTANDING THAT THE LIABILITY OF THE CARRIER UNDER THIS CONVENTION IS BASED ON THE PRINCIPLE OF PRESUMED FAULT OR NEGLIGENCE. THIS MEANS THAT, AS A RULE, THE BURDEN OF PROOF RESTS ON THE CARRIER BUT, WITH RESPECT TO CERTAIN CASES, THE PROVISIONS OF THE CONVENTION MODIFY THIS RULE. UNQUOTE.

16. NEW ARTICLE 26 IS NOT BEING COPIED NOW AS IT WAS SUBJECT OF AN EARLIER CABLE.
KISELYAK

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: SHIPS, CARGO, MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 28 mar 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978HAMBUR00451
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780136-0004
Format: TEL
From: HAMBURG
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780319/aaaaapzn.tel
Line Count: 383
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 114a81bc-c288-dd11-92da-001cc4696bcc
Office: ACTION IO
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 7
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3185877
Secure: OPEN
Status: NATIVE
Subject: UNCITRAL - CONFERENCE ON CARRIAGE OF GOODS BY SEA, HAMBURG SUMMARY: DEVELOPMENTS AT U.N. CARRIAGE OF GOODS BY SEA CONFERENCE DURING EASTER WEEKEND. CONCLUSION OF
TAGS: OCON, OTRA, AFIN, PORG, GE, US, UNCITRAL
To: STATE
Type: TE
vdkgvkey: odb://SAS/SAS.dbo.SAS_Docs/114a81bc-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014